

BILL ANALYSIS

C.S.H.B. 135

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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1991 legislation was passed to create the Auctioneer Education and Recovery Trust Fund. Prior to passage of this legislation there was a minimal history of losses through bonding companies with minimal fines.

Since 1991 the Fund has paid out in excess of \$267,252.00 to consumers resulting in claims brought against auctioneers. (A maximum of up to \$20,000 per claim)

The Texas Department of Licensing and Regulation (TDLR) have collected over \$160,000 in fines and penalties from auctioneers for failing to adhere to the auction law. These fines and penalties are for but not limited to failure to have their license numbers in newspaper ads; yellow page ads; posting /and or announcing the required notices at the time of their auctions; failure to hold a license and /or working for a non-licensed auctioneer; and failure to pay consignors in a timely manner (if at all).

It is for these reasons that there is a need for pre education. It is not enough for auctioneers to know the Texas Auctioneer License Act and the Texas Department of Licensing and Regulation's Rules regarding Auctioneers, they also need to be aware that there are additional State and Federal laws that apply to the Texas auction industry.

CSHB 135 seeks to codify a rule of conduct and bring some uniformity and consistency to the auctioneer profession.

RULEMAKING AUTHORITY

It is the committee's opinion that additional rulemaking authority is granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Sec. 1802.052, Occupations Code) of this bill.

ANALYSIS

Amends Section 1802.052, Occupations Code by setting new parameters for being eligible for an auctioneer's license. Subsection (B) doubles the proof of employment under a licensed auctioneer from one to two years and also the applicant must have participated in ten auctions instead of five under current law. The subsection also adds qualifications that an applicant must have a high school diploma or equivalent; not have a felony conviction during the five years preceding the date of application; and have completed 80 hours of approved curriculum at an auction school. The substitute also authorizes the Department of Licensing and Regulation to charge a reasonable fee to an auction school for approving the curriculum.

Amends Subchapter B, Section 1802, Occupations Code, by adding Section 1802.062 which states that a license is not required for an employee who does not act as a bid caller

Requires the executive director of the Texas Department of Licensing and Regulation to adopt rules as required by Section 1802.052, Occupations Code.

Provides that an auctioneer who applies for a license on or before January 1, 2004 is not required to complete the 80 hours of classroom instruction.

EFFECTIVE DATE

September 1, 2003. The Act applies beginning with an application for an auctioneer's license that is filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued for that purpose.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 135 requires an applicant to have not been convicted by a felony during the five years preceding the date of application. The original version stated that an applicant could not have been convicted of a felony involving moral turpitude during the five year period. CSHB 135 also adds language allowing TDLR to charge an auction school a reasonable fee for approving the curriculum.

CSHB 135 also adds new language that specifically states that an employee of an auction company who does not act as a bid caller at any auction in this state is not required to hold a license under this chapter. Language was also added at the request of the Texas Department of Licensing and Regulation in order to ensure they have the flexibility needed to properly enforce the provisions outlined by CSHB 135 and provides that an auctioneer who applies for a license on or before January 1, 2004 is not required to complete the 80 hours of classroom instruction.